

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 22, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Fulton Performance Products, Inc.**

Serial No. 75/201,174

Edgar A. Zarins, Esq., of Masco Corporation, for **Fulton Performance Products, Inc.**

Janice L. McMorrow, Trademark Examining Attorney, Law Office 104
(**Sidney I. Moskowitz**, Managing Attorney).

Before **Quinn, Hohein** and **Bucher**, Administrative Trademark Judges.
Opinion by **Hohein**, Administrative Trademark Judge:

Fulton Performance Products, Inc. has filed an application to register the term "LUG LATCH" as a trademark for an "attachment sold as a component of [an] anti-theft lock for vehicle wheels to prevent movement of the vehicle."¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "LUG LATCH" is merely descriptive of them. Registration has also

¹ Ser. No. 75/201,174, filed on November 21, 1996, based upon an allegation of a bona fide intention to use such term in commerce. Subsequently, by an amendment to allege use filed on December 28, 1998 and approved by the Examining Attorney, the application was amended to assert dates of first use of August 1998.

been finally refused in view of applicant's failure to comply with a requirement, pursuant to Section 1(b)(1) of the Trademark Act, 15 U.S.C. §1051(b)(1),² that the goods set forth in the application be specified with greater particularity.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusals to register.

Turning first to the refusal on the ground of mere descriptiveness, it is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the

² In light of the subsequently filed and accepted amendment to allege use, the statutory ground for such refusal is now Section 1(a)(1) of the Trademark Act, 15 U.S.C. §1051(a)(1), but the substance of the

average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Applicant argues that "the mark does not provide an immediate impression or connotation of the nature of the goods." Specifically, applicant asserts that:

The goods are in the nature of an anti-theft assembly to prevent unauthorized towing of a trailer. A bar assembly secured to the Lug Latch attachment prevents the trailer wheel from rotating. Although the bar is removable, the attachment remains secured to the wheel to facilitate easy securement of the anti-rotation bar. Thus, the goods associated with the mark are an anti-theft assembly for a trailer and not simply a lock for the tires or lugs of a vehicle. Any association between the goods and the mark requires some mental gymnastics and the typical consumer would not associate the mark with a trailer anti-theft device. The goods do not "latch" the vehicle "lug" to prevent removal as a consumer likely would believe. Instead, the device is an assembly for preventing the theft of a trailer by preventing wheel rotation.

We agree with the Examining Attorney, however, that the term "LUG LATCH" is merely descriptive of an attachment sold by applicant as a component of its anti-theft lock for vehicle wheels to prevent movement of the vehicle. The dictionary definitions which are of record show, in pertinent part, that The American Heritage Dictionary of the English Language (new coll.

requirement for greater specificity in the identification of goods remains the same.

ed. 1976) defines "lug" as "[a] nut, especially one that is closed at one end to serve as a cap" and lists "latch" as "[a] fastening or lock, usually consisting of a bar that enters a notch or cavity." Similarly, The Random House Compact Unabridged Dictionary (special 2d ed. 1987) respectively sets forth "lug" as "a projecting piece by which anything is held or supported"; defines "latch" as "a device for holding a door, gate, or the like, closed, consisting basically of a bar falling or sliding into a catch, groove, hole, etc."; and, in particular, also lists "lug nut" as "a large nut fitting on a heavy bolt, used esp. in attaching a wheel to a motor vehicle."

When these definitions are considered in relation to applicant's goods, it is plain, as confirmed by the "MOUNTING INSTRUCTIONS" reproduced below from applicant's specimens of use,

that while applicant's particular attachment does not serve to latch or lock a lug or lug nut in place, it does function as, and

is a feature or component of, a lug- or lug nut-mounted anti-theft lock or latch which prevents movement of a vehicle's wheel. The term "LUG LATCH," when applied to applicant's product, thus immediately describes, without conjecture or speculation, a significant function and feature of applicant's anti-theft lock for vehicle wheels, namely, the lug-mounted lock attachment or lug latch component. Such term, in short, conveys forthwith precisely what applicant's product does and is therefore merely descriptive of the goods within the meaning of the statute.

With respect to the remaining ground for refusal, we note that applicant has offered no argument to refute the Examining Attorney's contention that the word "attachment" in the identification of goods is "unacceptable as indefinite" because it fails to comply with the practice of the Patent and Trademark Office that applicants generally "must use the common commercial names for the goods, be as complete and specific as possible and avoid the use of indefinite words and phrases." Accordingly, absent a compelling argument to the contrary, we summarily accept the Examining Attorney's finding that the term "attachment" is indefinite and that applicant must specify its goods with greater particularity.

Decision: The refusals to register are affirmed.

T. J. Quinn

G. D. Hohein

Ser. No. 75/201,174

D. E. Bucher
Administrative Trademark Judges,
Trademark Trial and Appeal Board